IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1830 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHEMMEDBHAI KALOTA,

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MR RC KODEKAR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/03/2001

ORAL JUDGEMENT

#. Rule. Mr.Kodekar waives service of Rule on behalf of respondent-State. Heard the learned counsel for the respondent and perused the misc. criminal application and the order of the Judicial Magistrate, First Class

(Railway Godhra), dated 24.4.2000.

#. The facts of the case are that the petitioner is an accused in criminal case No.1692/99 which is pending in the court of Special Judicial Magistrate, First Class (Railway Godhra). Therein, he is charged for offence punishable under Section 143 of the Indian Railways Act for committing an offence of black marketing of railway tickets. The offence is alleged to have been committed on 10th July 1999 at Railway Protection Force Head at Vadodara. The accused-petitioner is resident of Godhra. The case has been registered against him in the court of Special Judicial Magistrate, First Class (Railway Godhra) at Godhra.

#. It is not in dispute that the Special Judicial Magistrate, First Class (Railway Godhra), Godhra, has jurisdiction in three Districts, viz., District Panchmahals, District Vadodara and District Kheda. It is stated by the petitioner that sixteen adjournments have been granted in this case which is of petty nature but not on a single occasion the complainant has remained present in the court nor any witness has also remained present. The complainant here is Railway Protection Force, Vadodara. In this case, an application came to be filed by the complainant for transfer of the case from Godhra to Vadodara. This application is dated 23.8.1999. The petitioner objected this application by filing detailed reply thereto which is dated 11.10.99. For about eight months on this application no order has been passed by the learned Judicial Magistrate. However, on 24.4.2000, this application came to be allowed and this case was transferred to Vadodara. The petitioner filed Criminal Application No.412/2000 in the court of Sessions Judge, Panchmahals, which came to be rejected on 6.9.2000 on the ground that the court has no jurisdiction to direct the Special Judicial Magistrate, First Class (Railway Godhra), Godhra, to try the case of a jurisdiction of Vadodara at Panchmahal District.

#. I fail to see any justification in this approach of the judicial officer to transfer the case from Godhra to Vadodara. It is nothing but only giving premium to the lapses on the part of the complainant. The Judicial Magistrate is not there to see the convenience of the complainant. He has jurisdiction to try this case at Godhra and in fact, this case was pending before him at Godhra. Despite of the fact that such petty matters are to be decided at an early date, the Judicial Magistrate has given reward for lapses and negligence on the part of the complainant in the proceedings. The complainant has

not remained present in the matter for a long period, i.e. from 2nd August, 1999 to 24th April, 2000 during which adjournments have been granted sixteen times. In fact, looking to this conduct and in my view a totally negligent and careless approach of the complainant, the complaint should have been dismissed. That has not been done. But on the contrary, for these lapses and carelessness and negligence on the part of the complainant, he has been rewarded by transferring the case from Godhra to Vadodara. I appreciate the grievance of the petitioner that in the era where we are talking of providing door-step justice to the litigants, this judicial officer has acted contrary to this demand. In fact, the approach of this judicial officer is not a justice oriented approach. The petitioner is residing at Godhra and naturally, if the matter is tried at Vadodara and if we go by this conduct, negligence and carelessness of the complainant, the petitioner may go there on each and every date, meaning thereby, many of the dates would have been unproductive and this person has to bear out heavy expenses. If the petitioner has committed any offence, he has to be punished by the courtbut not by this way of dealing with the matter by the complainant as what it has been done in this case. It is nothing but only causing sufferings to the accused without any fault on his part. In a case where the accused remains absent in the court on the date fixed in the criminal case, his bail bonds and personal bonds are forfeited and action is being taken for recovery of the amount of bond etc. and sometimes, he is not granted bail forthwith but contrary to it, merely because here the complainant may be a Government officer, more than what it was expected and necessary, latitude has been granted to the complainant by the judicial officer in this matter. He remained absent for sixteen times, but still the learned Magistrate has not taken care of the provisions as contained in Section 256 of the Criminal Procedure Code and this complaint has not been dismissed and the accused has not been discharged. Otherwise also, it is a case of Railway Protection Force and the officer-complainant may not have any difficulty to travel from Vadodara to Godhra along with the witnesses but contrary to it, it will heavily cost the petitioner to travel from Godhra to Vadodara, more so when there is also no guarantee that on the date fixed in the matter, the matter shall be taken up. The learned court below should have considered the convenience of both the parties and should not have gone by this fact alone that here the complainant is a Government officer.

#. In the result, this petition succeeds and the same is

allowed and the order of the Judicial Magistrate, First Class (Railway Godhra), Godhra, dated 24.4.2000 is quashed and set aside. The complainant is directed to remain present in the court on the next date of hearing as fixed by the court with all his witnesses. It is expected from the court to record statements of the witnesses on the very day or if has some difficulty to record their statements on the next day and same may go on day to day basis. Thereafter date be fixed for producing the defence if the accused so desires and then the matter be finally decided. All these proceedings are to be taken and finalized within a period of three months from the date of receipt of writ of this order. Compliance of this order be reported to this court. Rule is made absolute accordingly. No order as to costs.

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(sunil)